b.) Remarks

Claim 98 has been amended for better conformity with accepted U.S. practice as well as to recite the subject matter of claim 110. Accordingly, claims 110 and 114 have been amended in conformity therewith. Additionally, claims 120-122 are added in order to more specifically recite various preferred embodiments of the present invention, and claims 103-105, 108, 110, 111, 113 and 119 are amended to maintain their dependency.

For the Examiner's convenience, the subject matter of the amendment may be found in the specification as filed, at page 11, lines 14, 22 and 26. Accordingly, no new matter has been added.

In the November 13, 2009 Advisory Action, claims 98, 103-105, 108-111, 113, 114 and 117-119 remained rejected under 35 U.S.C. §103(a) as being obvious over Tabor (U.S. Patent No. 6,482,448) in view of Hastings (U.S. Patent Publication No. 2001/0041187), Miller (U.S. Patent No. 6,019,999), Ostlund (U.S. Patent No. 5,550,166) Shimizu (U.S. Patent No. 6,004,926), Goldberg (*Diabetes*, Vol. 28, Supp. 1 (1979) 18-24) and Goldberg et al. (*Med. Sci. Sports.*, Vol. 7, No. 3 (1975) 185-98).

Previously, Applicants pointed out the present invention relates to a method of supplementing a diet to enhance muscle size or strength by administering an admixture of (i) powdered or granular milk whey protein or milk whey peptides, (ii) ginseng, L-arginine, N-acetyl cysteine, glucomannan or folic acid, and (iii) myo-inositol, d-myo-inositol, cis-inositol, epi-inositol, allo-inositol, muco-inositol, neo-inositol, scyllo-inositol, d-chiro-inositol, l-chiro-inositol or d-pinitol.

As to that, Applicants pointed out that the cited art does not provide a *prima facie* case of obviousness since the claimed milk whey protein or peptides are powdered or granular, neither of which is explicitly taught or suggested by the prior art.

In response, in the October 13, 2009 Advisory Action, the Examiner states

> [t]he Applicant argues that one of ordinary skill in the art would know that liposomal-ion-exchange whey protein is not powdered or granule. However, the Applicant presents no evidence of the same.

As to Miller, however, Applicants respectfully wish to invite the Examiner's attention to column 6, lines 1-27, which discuss such liposome-encased protein are particularly designed to provide a time-release protein supplement for administration to patients suffering from "severely degraded" nutritional states resulting from the various chronic disease noted therein. ("Those patients, due to their lowered health conditions, are generally unable to tolerate elevated volumes of non-liposomal protein", *Id.*, at 27-29.) See also Figures 5 and 6.

In direct contrast, the present invention is concerned with increasing the speed at which the claimed components enter the bloodstream. This is accomplished in part by including in the composition at least one of glutamine, alanine, taurine, carnitine or acetyl-L-carnitine, see from specification page 7, line 30 to page 8, line 5.

Thus, the formulations, operation and use of the present invention differ in kind from those of Miller.

In any event, although the Examiner relies on Ostlund as showing oral administration of pinotol, Ostlund explicitly relates to treating conditions associated with insulin resistance ("[p]inotol and derivatives and metabolites thereof are useful in nutritional and medicinal compositions for treating conditions associated with insulin

resistance"). There is no cited art explaining why or how "enhancing muscle size and strength" (claim 98, line 2) is a condition associated with insulin resistance. Accordingly, if the Examiner again relies on Ostlund, citation of an appropriate reference or an affidavit of his personal knowledge under MPEP §2144.03 explaining how muscle size or strength (as in the present invention) is associated with insulin resistance (as in Ostlund) is respectfully requested.

Moreover, Applicants' claims recite patentable subject matter in their own right. Plainly, it is not contended by the Examiner that liposomal protein is granulated[1] (claim 122), and none of the cited art relates to guar gum or alpha-keto glutarate (claims 120 and 121).

In view of the above amendments and remarks, Applicants submit that all of the Examiner's concerns are now overcome and the claims are now in allowable condition. Accordingly, reconsideration and allowance of this application is earnestly solicited.

Claims 98, 103-105, 108-111, 113, 114 and 117-122 remain presented for continued prosecution.

[1] Miller's lyophilized liposomes (column 5, lines 19-26) are powdered (see Lu et al., Liposomal Drug Powders as Aerosols for Pulmonary Delivery of Proteins, AAPS *Pharm Sci Tech*, Vol. 6, No. 4 (2005) 641-48, cited in the accompanying Information Disclosure Statement), but they are not granular.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

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